

Exhibit F

ENERGIZER BRANDS
ENERGIZER BRANDS vs MY BATTERY SUPPLIER

May 21, 2020

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03:50:23PM

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

CASE NO: 1:19-CV-6486

ENERGIZER BRANDS, LLC,

Plaintiff,

vs

MY BATTERY SUPPLIER, LLC,

Defendant.

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TELEPHONIC CONFERENCE

IN THE MATTER OF

ENERGIZER BRANDS, LLC

vs

MY BATTERY SUPPLIER, LLC

May 21, 2020

4:01 p.m.

Deborah J. Bateman, Court Reporter

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APPEARANCES OF COUNSEL

On Behalf of the Plaintiff:

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## TELEPHONIC CONFERENCE BETWEEN PARTIES

May 21, 2020

03:59:50PM

03:59:50PM

MS. HUDAK: This is Sandra Hudak for My Battery Supplier, MBS. We asked for this conference today to go through Energizer's objections and responses to the document requests and interrogatories. Energizer has seemed to object to almost all of our requests -- (audio interference) --

04:01:29PM

04:01:34PM

04:01:34PM

04:01:39PM

04:01:48PM

(Court reporter clarification)

MS. HUDAK: Energizer has seemed to object to almost all of our requests and has stated that it won't produce any documents or interrogatories responsive to our requests -- almost all of the requests, so we wanted to have this call to see if we could understand Energizer's issues a little bit better and see if we can come to any compromise, or if we will just need to move to compel responses on all of our requests.

04:02:32PM

04:02:32PM

04:02:38PM

04:02:41PM

04:02:44PM

04:02:48PM

04:02:52PM

So to start from the beginning, it seems like Energizer has a fundamental objection to the definition of "Energizer products" in both the document requests and the interrogatories.

04:02:53PM

04:02:58PM

04:03:02PM

04:03:08PM

Can you please explain your position on that?

04:03:12PM

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1 something that you have that suggests that Energizer's 04:36:27PM  
2 profits and revenues have absolutely any relevance to an 04:36:32PM  
3 issue in this case, please feel free to follow up. But 04:36:34PM  
4 we don't see it, and we don't think it's there. 04:36:37PM

5 MR. BERKOWITZ: So there is case law on this. 04:36:42PM  
6 Energizer's profits on these products are relevant to the 04:36:45PM  
7 damages analysis. Even if Energizer is just seeking 04:36:48PM  
8 disgorgement or statutory damages, it's something that 04:36:52PM  
9 the Court will take into account in determining a damages 04:36:55PM  
10 amount, so that's where it comes from. 04:36:58PM

11 MS. NAGLE: Right. Well, if you can -- 04:37:01PM

12 MR. FINNERTY: Can you send us that case law, 04:37:02PM  
13 Mark? 04:37:06PM

14 MS. NAGLE: Yes, please. 04:37:06PM

15 MR. BERKOWITZ: Sure. 04:37:07PM

16 MS. HUDAK: Okay. So let's move on to the 04:37:16PM  
17 next request. Request No. 11 seeks all documents 04:37:18PM  
18 concerning plaintiff's attempts to purchase or purchases 04:37:23PM  
19 of Energizer products from defendant. Our understanding 04:37:27PM  
20 is that Energizer's refusing to provide any documents or 04:37:34PM  
21 information relating to this and similar requests except 04:37:41PM  
22 for information, quote, specific to the (inaudible) 04:37:45PM  
23 underlying this lawsuit. And one of the reasons put in 04:37:52PM  
24 the objection was that Energizer has thousands of 04:37:56PM

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1 employees, and it can't ask each one. 04:37:59PM

2 So I guess our primary -- or one of the first 04:38:03PM  
3 questions on this is has Energizer asked its relevant 04:38:07PM  
4 employees about their knowledge of MBS such as the 04:38:15PM  
5 e-commerce people who track the activities of Amazon 04:38:20PM  
6 sellers and other online sellers? 04:38:28PM

7 MS. NAGLE: So here's sort of where we 04:38:31PM  
8 probably just keep running into the same issue which is 04:38:34PM  
9 that Energizer hasn't sold any batteries to MBS, so 04:38:37PM  
10 there's nobody to ask. There's no relevant individual 04:38:41PM  
11 because this is not a relationship that has existed. And 04:38:45PM  
12 so what we know is what gave rise to this lawsuit, and so 04:38:47PM  
13 we are happy to and will review those records, and if 04:38:52PM  
14 there's anything non-privileged related to any purchases 04:38:57PM  
15 or what's asked for in this request, we'll produce it. 04:39:00PM  
16 But beyond that, because it's a nonexistent relationship, 04:39:04PM  
17 the request essentially asks that we, like, search every 04:39:09PM  
18 record in Energizer's history and ask every employee 04:39:17PM  
19 going back to 2009 if they're -- by any chance, they 04:39:18PM  
20 happened to ever run into or discuss MBS or attempt to 04:39:22PM  
21 purchase anything from MBS. It's just a needle in a 04:39:30PM  
22 haystack. 04:39:32PM

23 And I mean, I'd add, you know, MBS knows 04:39:34PM  
24 whether that happened. So if MBS already has information 04:39:36PM

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1 that this has occurred and that Energizer did have  
2 knowledge, if there are people or there's some  
3 transaction that you're aware of, I mean, share it with  
4 us, and we're happy to run it down. But this is -- this  
5 is a needle in a haystack. We have no reasonable basis  
6 to believe that there's anything that exists on this  
7 other than related to, you know, what came up in fall of  
8 last year.

9 MS. HUDAK: Okay. So focusing back,  
10 request -- documents concern -- just -- Energizer --

11 MR. FINNERTY: You're breaking up, Sandra.

12 MS. HUDAK: I'm sorry about. Can you hear  
13 me --

14 MR. FINNERTY: Sorry, Sandra.

15 MS. HUDAK: -- better?

16 MR. FINNERTY: Yeah. You were cutting --

17 MS. HUDAK: Can you hear me better?

18 MR. FINNERTY: -- out every couple of -- you  
19 were cutting out every couple of seconds. I'll just --  
20 someone will let you know if it keeps up; otherwise, you  
21 may need to try to redial.

22 MS. HUDAK: Okay. Thank you for letting me  
23 know. Is this better?

24 MR. FINNERTY: Yeah, this is. Thank you.

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1 MS. HUDAK: Okay. Great.

04:40:37PM

2 We were talking about Request No. 11 here  
3 which is asking for documents concerning plaintiff's  
4 attempts to purchase Energizer products from defendants,  
5 test purchases. Has Energizer asked the employees who  
6 would be responsible for such test purchases about  
7 documents that are responsive to this request?

04:40:39PM

04:40:44PM

04:40:47PM

04:40:51PM

04:40:58PM

04:41:01PM

8 MS. NAGLE: Yeah. So we are -- so as we  
9 stated, we're going to produce non-privileged documents  
10 like that, so we are -- we're pulling -- we will pull  
11 that together, if any exists, yes.

04:41:04PM

04:41:07PM

04:41:10PM

04:41:12PM

12 MS. HUDAK: Okay. And then generally -- I  
13 mean, so this Request No. 11 is asking about test  
14 purchases. And then Request No. 12 asks about documents  
15 concerning plaintiff's offer to sell products to  
16 defendant, including offers to sell bulk products to  
17 defendant.

04:41:17PM

04:41:21PM

04:41:25PM

04:41:31PM

04:41:35PM

18 Has Energizer asked relevant employees about  
19 documents responsive to this request?

04:41:41PM

04:41:44PM

20 MS. NAGLE: Yeah, that's -- so we answered.  
21 We said there are no documents responsive because  
22 Energizer has not made such offers.

04:41:47PM

04:41:49PM

04:41:51PM

23 MS. HUDAK: Okay. So Energizer's asked all  
24 relevant employees?

04:41:56PM

04:42:02PM



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1 MS. NAGLE: We have conducted a reasonable  
2 inquiry. 04:42:03PM  
04:42:05PM

3 MR. FINNERTY: I mean, you have -- 04:42:05PM

4 MS. NAGLE: I mean -- 04:42:06PM

5 MR. FINNERTY: Do you have names of -- 04:42:07PM

6 MS. NAGLE: If you guys have names, I mean, 04:42:09PM  
7 share them with us. We continue to tell you that we 04:42:12PM  
8 haven't sold to MBS. And I -- I don't know if we're just 04:42:15PM  
9 crossing each other here in a way that's unclear, but we 04:42:20PM  
10 have no information to suggest or support your position 04:42:23PM  
11 that Energizer has sold or offered to sell products to My 04:42:28PM  
12 Battery Supplier. And so we've conducted -- that front, 04:42:34PM  
13 and we have no documents, and that's what we've said. 04:42:39PM

14 And so if there's some -- conversation that 04:42:42PM  
15 you believe happened at some point in time, I mean, it's 04:42:45PM  
16 your obligation to provide that to us. And, like, we're 04:42:47PM  
17 happy to see it and be reasonable in how -- you know, in 04:42:52PM  
18 looking -- looking into it. But if you don't have it, I 04:42:53PM  
19 don't know what we're getting at here, and -- I mean, I 04:42:58PM  
20 don't know how much more you have to get through, but 04:43:01PM  
21 we've got about 17 more minutes. 04:43:03PM

22 MS. HUDAK: Okay. So I would just -- you're 04:43:06PM  
23 asking for, you know, a list of names. We would just say 04:43:09PM  
24 look at our initial disclosure. We provided a lot of 04:43:13PM

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1 MR. BERKOWITZ: Okay. Let's try to set up a  
2 time for next week.

3 MS. NAGLE: Okay. Send us some times.

4 MR. FINNERTY: Sounds good, Mark.

5 MS. NAGLE: Thank you.

6  
7 (Whereupon the meeting was adjourned at  
8 5:02 p.m.)  
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05:02:29PM

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05:02:35PM

05:02:36PM

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COMMONWEALTH OF MASSACHUSETTS

ESSEX COUNTY

I, Deborah J. Bateman, Notary Public, in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing record, pages 1 through 47, inclusive, is a complete, accurate, and true transcription of my stenographic notes taken in the aforementioned matter to the best of my skills and ability.

I witness whereof, I have set my hand and seal this 28th day of May, 2020.



Deborah J. Bateman, Notary Public in and  
for The Commonwealth of Massachusetts  
My Commission Expires: November 2, 2023